

Basic Education Laws Amendment Bill B2B-2022

*A joint submission by Equal Education & Equal
Education Law Centre*

Submission to the National Council of Provinces



COMPULSORY GRADE R

- We welcome the introduction of compulsory Grade R.
- However, in context of limited resources, school overcrowding and potential introduction of criminal sanctions, we **recommend a phased approach.**
- We also think that the relationship between ‘school going age’ and ‘age of admission’ should be clarified.



FLAWED DEFINITION OF SERIOUS MISCONDUCT

- We are concerned that the definition of ‘serious misconduct’ is too broad as well as unclear.
- This could lead to children being excluded disproportionately and unfairly – undermining their right to basic education.
- We are also concerned that the definition give schools broad powers to sanction learners for conduct unrelated to the school or school community and which falls outside of the school’s proper jurisdiction.



INAPPROPRIATE CRIMINALISATION OF PARENTS AND CAREGIVERS

Several of the amendments either increase or introduce criminal sanctions for parents / caregivers



Clause 2(b) criminalises parents who prevent a child from attending school without a good reason.
Clause 38 creates a criminal offence of parents/caregivers who knowingly submit forged or misleading information when applying for admission or fee exemption.



THIS WOULD CREATE SERIOUS PROBLEMS:

Negatively impacts women

Does not solve underlying problems

Leaves children without caregivers

Archaic, overly punitive and not in best interests of the child

An illustration of several hands raised in a crowd, each wearing a different style of watch or bracelet. The hands are in various colors and are set against a background of colorful, patterned sleeves. The overall style is modern and artistic.

SCHOOL GOVERNING BODY POWERS

“Rather than introducing new laws, the BELA Bill merely brings the law in alignment with what the courts have already confirmed: the role of school governing bodies is critical, but the State has important and final oversight responsibility to ensure equity.” – Roné McFarlane

SCHOOL GOVERNING BODY POWERS



Rivonia: “the Department maintains ultimate control over the implementation of admission decisions”



Ermelo: DCJ Moseneke berated the school’s SGB for arguing “*that it is entitled to determine a language policy having regard only to the interests of its learners and of the school in disregard of the interest of the community in which the school is located and the needs of other learners*”



FEDSAS: the Schools Act envisages an interventionist role for the Department in the admission decisions.

A Balancing Act

STATE POWERS:

We know very well that the State does not always act with benevolent intent and might not be striving toward equity and the best interests of learners. In a number of cases relating to language and admissions, PEDs have acted in a manner that was procedurally unfair and their decisions were overturned.

SGB POWERS:

SGBs have a crucial role to play – they understand the particular context of a school better than most government officials, and they bring the voices of parents, communities and learners into decision making processes. SGBs also frequently have to step in to fulfil roles and duties where PEDs have failed.



BALANCE:

SGBs should continue to have the power to formulate admissions and language policies, but they must also serve the public good and not only the interests of the individuals in their schools. The State plays an NB oversight role and must use its powers to ensure resources are equitably distributed and cater to the needs of learners.





THANK YOU

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